

Before the
Federal Communications Commission
 Washington, D.C. 20554

JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act)	
--Competitive Bidding for Commercial)	
Broadcast and Instructional Television Fixed)	
Service Licenses)	
)	
Reexamination of the Policy)	GC Docket No. 92-52
Statement on Comparative)	
Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	

To: The Commission

COMMENTS OF BIBLE BROADCASTING NETWORK, INC.

Bible Broadcasting Network, Inc. ("BBN") by its attorneys, hereby files its Comments on the Commission's above-captioned Notice of Proposed Rule Making, FCC 97-397, released November 26, 1997, in MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264 (herein "NPRM").¹

Paragraph 40 of the NPRM seeks comment on the Commission's tentative conclusions regarding the applicability of Section 309(l) of the Communications Act to pending secondary broadcast service (FM translator) applications. The Commission tentatively construed Section 309(l) as encompassing only full service commercial radio or television station applications, and

¹Comments are due by January 26, 1998. See 62 F.R. 65392, released December 12, 1997.

that pending secondary broadcast service applications, whether filed on or after July 1, 1997, are governed by the broad language of amended Section 309(j)(1) requiring competitive bidding procedures “if mutually exclusive applications are accepted for any initial license or construction permit.”

The Commission’s tentative conclusion in this regard is fully supported by the plain language of Section 309(j). All of Section 309 is applicable to “each application filed with it [the FCC] to which Section 308 applies. . . .” Section 308 applies to applications not only for full power broadcast stations, but also to secondary broadcast stations such as translators. Indeed, Section 308 is the authority by which the FCC issues cellular or PCS licenses which are also subject to auction. Thus, the Congress’ use of the term “any initial license or construction permit” can only mean any license or construction permit to which Section 308 is applicable, including translators. Otherwise, the Congress would have included secondary service stations such as translators as one of the “exemptions” listed in Section 309(j)(2). In construing the Communications Act, the courts have paid particular attention to the specific language used by the Congress.²

It is BBN’s suggestion that should the Commission finally conclude that Section 309(l) is applicable to pending secondary service applications, a mechanism should be incorporated into the new rules to provide for a refund of the amount paid in a frequency auction in the event the licensee is required at some later date to relinquish the construction permit or license either because of a new FM allotment or because of alleged interference.

²For example, “shall is the language of command. . . .”, *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186, 1191 (D.C. Cir. 1985).

In the case of a new FM allotment, the Commission has traditionally required the petitioner in the rulemaking to certify that the petitioner would reimburse any licensee its reasonable expenses to modify its facilities to accommodate the proposed change. While normally this rule does not apply to displacement of secondary service licensee's since the auction funds went to the U.S. Treasury, it seems only fair and equitable that the rulemaking petitioner should agree to reimbursement of the auction price paid by the translator licensee.

Section 74.1203 of the Rules provides in part that “[a]n authorized FM translator or booster station will **not be permitted to continue to operate** if it causes **any actual interference** to (1) the transmission of any authorized broadcast station; or the reception of the input signal of any TV translator, TV booster, FM translator or FM booster station; or (3) the direct reception by the public of the off-the-air signals of any authorized broadcast station. . . . Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.” (emphasis added.) The rule goes on to provide that the operation of the translator must be suspended and “shall not be resumed until the interference has been eliminated.” Thus, construction of an FM translator can be a risky proposition in itself since interference claims may arise at any time during the license period and the translator might have to be shut down. BBN has been required in the past to terminate operation of FM translator stations based on interference complaints.

In light of the applicability of Section 74.1203, it would not be equitable to require an FM translator licensee to bid for and pay for an operating authorization that could be rescinded at will

under the same standards that apply to primary allotments. In the event a licensee or permittee of an FM translator were required to permanently suspend operation of the FM translator because of interference concerns, the affected party should be permitted to apply to the Commission for a prompt refund of all or a portion of the fee it paid for the spectrum at the auction.

Wherefore, BBN respectfully requests the Commission to consider these comments in connection with the above-captioned rule making proceeding.

Respectfully Submitted,

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January 26, 1998